



**Billing Code 4333–15**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS–R8–ES–2018–N081; FXES11140800000–178–FF08ECAR00]**

**Habitat Conservation Plan for the Least Bell’s Vireo; Categorical  
Exclusion for Chandler’s Sand and Gravel Project, Orange, California**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, have received an application from Chandler’s Sand and Gravel, LLC for a 10-year incidental take permit for the endangered least Bell’s vireo pursuant to the Endangered Species Act, as amended. We are requesting comments on the permit application and on our preliminary determination that the applicant’s accompanying proposed habitat conservation plan (HCP) qualifies as low effect, eligible for a categorical exclusion under the National Environmental Policy Act. The basis for this determination is discussed in our environmental action statement (EAS) and associated low-effect screening form, which are also available for public review.

**DATES:** Written comments should be received on or before **[INSERT DATE 30  
DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES: *Submitting Comments:*** You may submit comments by one of the following methods. Please include “OC Mine HCP” at the beginning of your comments.

- *U.S. Mail:* Field Supervisor, Carlsbad Fish and Wildlife Office,  
U.S. Fish and Wildlife Service, 2177 Salk Avenue, Suite 250,  
Carlsbad, CA 92008.
- *Fax:* Field Supervisor, 760–431–9624.
- *Email:* fw8cfwocomments@fws.gov.

***Obtaining Documents:*** You may obtain copies of the documents by the following methods:

- *Internet:* [https://www.fws.gov/carlsbad/HCPs/HCP\\_Docs.html](https://www.fws.gov/carlsbad/HCPs/HCP_Docs.html).
- *Telephone:* 760–431–9440.
- *U.S. Mail:* Carlsbad Fish and Wildlife Office (address above).
- *In-Person:* You may examine the documents by appointment during regular business hours at the Carlsbad Fish and Wildlife Office (address above).

Please call to make an appointment (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Ms. Karen Goebel, Assistant Field Supervisor, Carlsbad Fish and Wildlife Office, 760–431–9440. If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service (FRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service (Service), have received an application from Chandler’s Sand and Gravel, LLC

(applicant) for a 10-year incidental take permit for one covered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The application addresses the anticipated “take” of the endangered least Bell’s vireo (*Vireo bellii pusillus*; vireo) associated with regrading a 14-acre property and filling an abandoned pit mine on site in the City of Orange, Orange County, California. A conservation program to avoid, minimize, and mitigate for project activities would be implemented as described in the applicant’s proposed habitat conservation plan (HCP).

We are requesting comments on the permit application and on our preliminary determination that the proposed HCP qualifies as a low-effect HCP, eligible for a categorical exclusion under the National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C. 4321 *et seq.*). The basis for this determination is discussed in our EAS and associated low-effect screening form, which are also available for public review.

## **Background**

Section 9 of the ESA and its implementing Federal regulations prohibit the take of animal species listed as endangered or threatened. “Take” is defined under the ESA as to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect [listed animal species], or to attempt to engage in such conduct” (16 U.S.C. 1538). “Harm” includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns such as breeding, feeding, or sheltering (50 CFR 17.3).

However, under section 10(a) of the ESA, the Service may issue permits to authorize incidental take of listed species. “Incidental taking” is defined by the ESA implementing regulations as taking that is incidental to, and not the purpose of, carrying out an otherwise lawful activity (50 CFR 17.3). Regulations governing incidental take permits for endangered and threatened species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

### **Applicant’s Proposed Project**

The project is located on a 14-acre property in the City of Orange in Orange County, California. The applicant requests a 10-year permit under section 10(a)(1)(B) of the ESA. If we approve the permit, the applicant anticipates taking vireo as a result of permanent impacts to 2.0 acres of riparian woodland that the species uses for breeding, feeding, and sheltering. The take would be incidental to the applicant’s activities associated with the regrading of the property and filling the abandoned pit mine on site.

The applicant proposes to mitigate permanent impacts to 2.0 acres of occupied vireo habitat through the creation of 1.48 acres and enhancement of 1.88 acres of vireo habitat on site and enhancement of 2.53 acres of vireo habitat off site. All of the created and enhanced habitat will be conserved and managed in perpetuity.

The applicant’s proposed HCP also contains measures to minimize the effects of construction activities on the vireo, including the following: oversight of project activities by a biological monitor; fencing the project limits; removing

vegetation outside the vireo nesting season; implementing a Storm Water Pollution Prevention Plan to avoid and minimize erosion, sedimentation, and pollution in adjacent native habitat; removing invasive plant species from the project work area; minimizing the use of project lighting; storing and removing trash; controlling dust; ensuring that fire suppression equipment at all times; and monitoring and reporting to the Service upon project completion.

### **Proposed Action and Alternatives**

The Proposed Action consists of the issuance of an incidental take permit and implementation of the proposed HCP, which includes measures to avoid, minimize, and mitigate impacts to the vireo. If we approve the permit, take of vireo would be authorized for the applicant's activities associated with the implementation of the OC Reclamation Mine project. In the proposed HCP, the applicant considers the No Action Alternative. Under the No Action Alternative, no incidental take of least Bell's vireo resulting from habitat modification would occur, and no long-term protection and management would be afforded to the species. The No Action Alternative would not meet the primary goal of the proposed Project, which is serve as a receiver site for excess fill and to fill the abandoned pit mine. Because the abandoned pit mine contains the habitat supporting the vireo, it is not possible to implement the project and avoid incidental take of vireo.

### **Our Preliminary Determination**

The Service has made a preliminary determination that approval of the HCP and issuance of an incidental take permit qualify for categorical exclusion under NEPA (42 U.S.C. 4321 *et seq.*), as provided by the Department of the Interior implementing regulations in part 46 of title 43 of the Code of Federal Regulations (43 CFR 46.205, 46.210, and 46.215), and that the HCP qualifies as a low-effect plan as defined by the Habitat Conservation Planning Handbook (December 2016).

We base our determination that a HCP qualifies as a low-effect plan on the following three criteria:

- (1) Implementation of the HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats;
- (2) Implementation of the HCP would result in minor or negligible effects on other environmental values or resources; and
- (3) Impacts of the HCP, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant.

Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. We will consider public comments in making the final determination on whether to prepare such additional documentation.

## **Next Steps**

We will evaluate the proposed HCP and comments we receive to determine whether the permit application meets the requirements and issuance criteria under section 10(a) of the ESA (16 U.S.C. 1531 *et seq.*). We will also evaluate whether issuance of a section 10(a)(1)(B) incidental take permit would comply with section 7 of the ESA by conducting an intra-Service consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue a permit. If the requirements and issuance criteria under section 10(a) are met, we will issue the permit to the applicant for incidental take of vireo.

### **Public Availability of Comments**

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

### **Authority**

We provide this notice under section 10 of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

**G. Mendel Stewart,**

*Field Supervisor,*

*Carlsbad Fish and Wildlife Office,*

*Carlsbad, California.*

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